

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Affordability, Real Estate Law and Mortgages Workgroup May 16, 2013, 1:30 PM House Room C, General Assembly Building

I. Welcome and Call to Order/Introductions

- **Delegate Danny Marshall, Chair** called the meeting to order at 1:30 PM.
 - In addition to the invited speakers the following Workgroup members were in attendance:
 - **Workgroup Members:** *Delegate Rosalyn Dance; Delegate Barry Knight; Senator Mamie Locke; and Senator George Barker; Mark Flynn, Governor Appointee; T.K. Somanath, Governor Appointee; Neal J. Barber, Community Futures; Steve Baugher, Virginia Association Mortgage Brokers; Paul Brennan, Virginia Housing Development Authority; Robert N. Bradshaw, Independent Insurance Agents of Virginia; J.G. Carter, SunTrust; Tyler Craddock, Manufactured & Modular Housing Association; Chip Dicks, Virginia Association of Realtors; Andrew M. Friedman, Virginia Beach Dept. Housing & Neighborhood Preservation; Kelly Harris-Braxton, Virginia First Cities; Shea Hollifield, Dept. of Housing and Community Development; Kelly King Horne, Homeward; Erik Johnston, Virginia Association of Counties; John H. Jordan, Manufactured Housing Communities of Virginia; Alexander Macaulay, CitiGroup; R. Schaefer Oglesby, Virginia Association of Realtors; Renee Pulliam, Virginia Apartment Management Association; Jay Speer, Poverty Law Center; Michael Toalson, Home Builders Association of Virginia; Michele Watson, Virginia Housing Development Authority; Cal Whitehead, Whitehead Consulting*
 - **Staff:** *Elizabeth Palen, Executive Director of VHC*

II. Housing Trust Fund-update

- **Bill Shelton, Department of Housing and Community Development:** *Piece of legislation, HB 2005, made changes to modify what was historically called the*

Virginia Partnership Revolving Fund and is now the Virginia Housing Trust Fund. There were two fundamental changes to the legislation:

- The legislation picked up language from the previous year's budget bill and codified it through 2005. We have cleaned up other sections of the code because the old partnership revolving fund was referenced in many places. We picked up these citations and brought them forward into what is now the Virginia Housing Trust Fund.
- As the bill made it through the legislature, the budget language created confusion. In the old partnership fund, an appropriation would be deposited into an account at the Virginia Housing Development Authority, which would essentially function as the banker.
- Because it was an appropriation, the budget language said it would go Non-reverting fund at treasury. As it now gets pulled into the code, VHDA's role became confused.
- The amendments make clear that while we have a non-reverting fund at treasury, we still have the authority to work through the VHDA to serve as underwriter and to serve as legal counsel on closing the loans, servicing the loans, and enforcing provisions of the loan documents.
- It remains property of trust funds which still is a non-reverting account. We can redirect the return of funds into treasury as we desire. For administrative ease, we need VHDA to have some flexibility.
- At this year's session there was an additional million dollars, so the original seven million is now eight million. We created a plan as directed in original budget language. Having no comment on that, we hope to move forward with implementation. Funding becomes available as of July 1 of this year.
- We have already gone out with a series of workshops, and solicited our first round of application. A second round is scheduled in July to August, and a possible third in October. Interest was very high, with a large number of applications for both the loans and grants. We can get that to you shortly.
- We have partnered with VHDA for a foreclosure counseling component, which we will implement this in the upcoming fiscal year. We are also assisting with entities that will be purchasing foreclosed properties, performing modest renovations, and putting them back on the market.
- The final piece is the grants portion, which targeted at entities that are undertaking permanent support of housing for the homeless. All programs moving forward and on track.
- **Delegate Marshall:** asked for questions. Hearing none, the meeting proceeded to the following part of the agenda.

III. First-Time Home Buyer Savings Account

- **Chip Dicks, Virginia Association of Realtors:** We thought it was a good idea to create a first-time home buyers account problem. While performing research, we discovered that Montana has established such a program. We approached Delegate Tag Greason, and we massaged the Montana legislation and brought it into Virginia Code.
- During the legislative process, we worked with the Virginia Bankers Association and the Virginia Credit Union League, and others. Questions arose as to whether first time saving accounts would it create additional liability and responsibility on the providers of those account, the financial institutions. Mr. Mel Tull, *General Counsel to the Virginia Bankers Association*, and I made a significant effort to address issues of potential additional regulatory responsibilities.
- The legislation began with the Montana legislation allowing someone to make a deduction from income to put aside money into a first-time homebuyers saving account for a beneficiary. However, that would be significant on a financial impact basis for the Commonwealth, so we eliminated that feature of the bill.
- Instead of deducting that amount, it would be treated like a Roth IRA or some other tax preference account, which could accumulate tax-free. The revenue impact of the substitute projects that it is \$300,000 in 2014 and projects the negative fiscal impact going forward.
- The legislation would allow someone to open an account in their name, where the bank would remain unaware of the type of account opened. The tax department has agreed to create guideline that would allow that the account number based on the 1099 that the financial institution has given me, would be claimed as a first time home buyer tax preference under the legislation. All of the burden of making sure I file the proper tax form and claim the proper tax preference would fall onto the taxpayer.
- The legislation is long, but the changes are in the front portion of the bill. Changes to legislation can be found in the attached files (found under “materials.”)
- We see two situations where a first time home owner’s account may be opened: One where an account is opened when a child is born or young for the purpose of exempting the growth on the account from state to the point where it is used for the beneficiary.
- The second situation is where the beneficiary is nearing a point where they may buy a home, but they need down payment assistance. A parent or relative could put money into a first time home owners account and facilitate their purchase.
- We have added a disincentive to use the funds of the account for a non-eligible purchase, where the account holder must pay both a penalty and tax on the gains of the account.

- The legislation further described the interest on the income can be claimed as exempt, but no tax deduction will be awarded for making the contribution.
 - **Delegate Marshall:** In lines 19-21, can the first-time homeowner defined by a couple or by an individual.
- **Dicks:** This is addressed in line 22 in the definition of “qualified beneficiary,” which is described as someone who has neither owned a home individually or jointly.
 - **Delegate Marshall:** How long has this been a law in Montana, and has it been a success?
- **Dicks:** It is a quite recent law, so we do not have any history. We will report back with more information.
 - **Mark Flynn, Governor Appointee:** Is there any problem with the beneficiary also being the account holder?
- **Dicks:** No, there is no limitation on that, so you may set up an account for yourself.
 - **Flynn:** When setting up an account, does the beneficiary need to be immediately identified?
- **Dicks:** At the financial institution, an account would be opened under your name, and then on tax form, the beneficiary would be identified.
 - **Bob Bradshaw:** Even with the many type of investment funds, no similar type of savings account exists already?
- **Dicks:** I would create an account and hire a lawyer to create a marital trust or gift to minors trust; the account would still get the 1099 at the end of the year, but the trust document would denominate how to exempt that from taxation going forward.
- We began with a federal gift tax exclusion for purposed of being able to make a contribution, however that had a negative fiscal impact on the Commonwealth. The long-term value of these accounts is the amount of growth that can be accumulated over the long term.
 - **Bradshaw:** Say I open an account for my granddaughter, when she turns eighteen can she go and use the funds in the account as she pleases?
- **Dicks:** The account is under your name. When you die, however your disposes of your account, that would describe what happens to the account.
- You control when she gets the money because the account is under your name. If you set it up in her name or with some other trust document, then at eighteen she would control the account.
 - **Delegate Marshall:** In Montana, are the majority account bought for grandchildren or for individuals saving for down payment?
- **Dicks:** Because the legislation is so recent, I believe it is the latter situation, people trying to set up accounts to get benefits for accounts now. In the current economic environment, banks do not pay much interest on traditional accounts. To get growth on these accounts, funds are put into investment accounts like stocks and mutual funds.

- **Delegate Marshall:** Is the \$50,000 amount what Montana used or was this amount determined amount specifically for Virginia?
- **Dicks:** In the House Finance Committee, some concern were raised that over-funding could be put in the account to raise growth and committing fraud on the system. We named this amount as a cap that also allowed tax department to create model of the fiscal impact.
 - **Matt Bruning** *Virginia Bankers Association:* Going through the Taxes Fiscal Impact Statement on Montana, I believe it says there is a \$3,000 limit on an individual contribution per year over a period of 10 years, and \$6000 limit for a joint account. This corresponds to a \$30,000 and \$60,000 limit respectively over a ten year period, which is similar the cap amount in Virginia.
- The VBA certainly support the concept of the bill, and the current draft addresses concerns regarding the responsibilities of the financial institutions concerning the accounts. Language of the bill alleviates technical concerns, but some policy concerns are still present on the creation of such a program.
- While we understand the realtors' desire for a minimal fiscal impact, we are concerned by the potential penalties when compared to the negligible tax benefits. The penalty for funds withdrawn non-home buying purchases is 5% of interest accumulated for such amounts on top of payments that the tax would have otherwise been paid out on such funds.
- While we appreciate lack of administrative burden on our part, our concern related to customer relations. When faced with unexpected penalties, we believe that they will they may come back to us or our regulators with complaints.
- Our members bare the reputational risk on a program that provides minimal benefit to the consumer. Even with no reporting burden on banks, at a minimum there would need to be some awareness training.
- This confusion factor juxtaposed against the minimal consumer benefit and possible regulatory concern regarding the penalty all make it difficult for us to support the legislation.
 - **Delegate Marshall:** Did you bring these concerns to finance committee and subcommittee last session?
- **Dicks:** We had a gentleman's agreement that we would not fight issue in House Finance Committee. We had not quite revolved our concerns, but the legislative count was such that we had to move forward. It is fair to say we never had a full legislative debate.
- If the concern is the penalties, we could cap penalties at no greater than the amount of the interest.
 - **Alexander Macaulay:** On line 77-79, what qualifies as an "additional burden"? Is that in the opinion of the financial institution?

- **Bruning:** Yes, I believe that was the intent of the language.
 - **Macaulay:** Will the Bureau's Financial Institutions and the Department of Taxation do any regulations to flush this language out?
- **Bruning:** On line 84 describes how the Department of Taxation is to develop the guidelines. The Bureau for our state chartered institutions is to have regulatory oversight of state charter banks.
 - **Macaulay:** Will regulations specify the point regarding the bank making the decision of the administrative burden?
- **Bruning:** Line 87 has same general statement. When the Department of Taxation releases those guidelines, any guideline should not have any additional administrative or reporting burdens.
 - **Macaulay:** Those are the guidelines applicable to the account holders, not to the financial institution. I believed that is something to be further discussed.
- **Mel Tull:** The intent of the line was to make clear by legislation that there was no intent to put any additional burden on banks other than to maintain the ordinary accounts.
 - **Macaulay:** I suggest to strike words "to account holders" and just say "the guidelines to implement the provisions of this chapter" to not restrict which guidelines being discussed.
- **Bruning:** The reason we had specifically "to account holders" was that we did not want any assistance from Tax Department articulating what we can and cannot do. The burden, as drafted, falls on the user.
 - **Macaulay:** I believe it ought to be clearer that it is in the judgment of the financial institution whether there is a burden. Secondly, on line 32 says that "a first time homebuyer's savings account may be established at a financial institution," and then on line 77 is says "financial institutions that maintain first time homebuyer's savings accounts." Is it optional for the bank to open these accounts?
- It says that a first time homebuyer may be established at a financial institution by an account holder pursuing to this chapter, so does that give me the right to open the account? It does not say at an institution willing to open such an account
- **Tull:** It is theoretically possible that a bank not know you are setting an account up with this intent. That is a fair point. On the other hand, I do not think there is anything in the statute that would compel a bank to open these accounts.
 - **Macaulay:** Respectfully, I disagree. I believe the way this is written if I want to open an account, I can do so.
- **Dicks:** We could add language that does not require the bank to open such accounts.
 - **Macaulay:** I would defer to the opinion of Counsel of the Banker's Association.

- **Delegate Marshall:** On line 32, what is a financial institution defined as? Is it a bank or stockbroker or credit union?
- **Tull:** Yes, it is a broader term than just bank and does include credit unions and other financial entities.
- **Watson:** Was consideration given that intent of accountholder opening for a grandchild? At some point does the responsibility transfer from the account holder to the beneficiary to use the funds for appropriate means? Or does the penalty always lie with the account holder?
- **Dicks:** It would be the account holder's responsibility with this legislation. If the account is placed in the name of the grandchild, then they need to address that with some trust document. If the account holder keeps the account in their name, then regardless of the child's age, the account goes in accordance to their will.
- **Mark Haskins, Virginia Department of Taxation:** Firstly, the Department of Taxation does not take positions on legislation. We offer technical assistance. The original bill treated this more like a 529 plan. Virginia gives a deduction for the amount of money contributed into a 529 plan, which is capped at up to \$5,000 annually. That created a huge fiscal impact.
- This is a state only benefit; and there is no state deduction for the contributed, but a deduction for the amount of interest earned on the account. I do not believe the penalty will be an issue, as it is limited to 5% of the benefits.
- The Department has some concern dealing with the enforcement once the banking community is relieved of any identification for these accounts. , We will end up with a tax return where someone takes a deduction for an amount of interest on an account that looks just like the other savings accounts. It is not marked "First Time Homebuyer Savings Account."
- We will likely require some information from the people claiming these deductions, and will build some sort of database to compare information they submit one year to the next to determine if the funds are used permissible reasons.
- It is a voluntary tax system, but we have fiduciary obligation to enforce the law.
- The fiscal impact assessment is our best estimate is based on current interest rates and information from realtors. Generally, the amount of tax we lose is in proportion to the amount of benefits that someone gets. This specific legislation has minimal impact on the Commonwealth's General Fund budget, which it also means it has minimal benefit.
- However, it does provide a benefit to the extent that if Commission believes this is a good policy going forward, then we will be there to implement it.
- **Marshall:** What happens if a beneficiary is out of state?
- **Haskins:** The fund of the account must be for a home bought in Virginia. We would need proof that home purchased is in the Commonwealth.

- **Macaulay:** What if its marketable security is \$50,000, and the penalty was substantial?
- **Haskins:** Department of Taxation will be imposing the penalty, and we usually get the first complaints.
- **Dicks:** It seems that there are a few takeaways. One is further work on the penalty provision. Another would be with respect to Tax Department guidelines, where the account holder would provide copy of deed and settlement statement. Lastly, is to discuss whether a bank is required to offer this.

IV. Introduction Service Members Civil Relief Act and VRLTA

- **Dicks:** The Service Member Civil Relief Act is a relatively new law the war in Iraq that enhances the Soldiers' and Sailors' Relief Act from post-World War II to gives service members extra rights. The concept is that service members are often in remote locations and are not effectively able to deal with their financial obligations.
- Within the SMCRA are provisions that deal with residential landlord tenant issues. These provisions allow a service member to terminate an existing lease, if they give at least thirty days notice prior to the next rent due date.
- Under the Virginia Residential Tenant Act is a provision that states that their provision for lease termination is limited to permanent change of duty station more than a thirty-five mile radius from the residence or temporary duty longer than 90 days and more than thirty-five miles, or someone is discharged from active service or from the National Guard, or ordered to report to on-base housing and they will lose their basic housing allowance.
- We reconciled the other provisions about notices a few years ago, but a conflict remains. The JAG officers say and what the housing officers say that the SMCRA trumps all VRLTA provision. However, most residential landlords in Virginia follow the VRLTA and follow the thirty-five mile radius in terms of notices and such.
- I suggest bringing together JAG officers, representatives of multi-family housing industry, and member of poverty law center to build consensus of whether the VRLTA provisions need to be modified.
 - **Delegate Marshall:** Would the service members include both current and retired members?
- **Dicks:** The SMCRA only applies to current active duty service members.
 - **Bradshaw:** Has the VAR invited the service department to discuss these issues?
- **Dicks:** VAR has had some preliminary discussion. The government service departments do not always communicate and have different perspectives. We thought a legislative forum would be an appropriate way to get all the branches together to have a discussion, as we have not yet been able to do so.

V. Public Comment:

- **Delegate Marshall** asked if those in the audience had any further thoughts or concerns.

VI. Adjourn:

- Upon hearing no public comment, **Delegate Marshall** adjourned the meeting at 2:40 PM.